SERVED: August 24, 1993

NTSB Order No. EA-3974

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 23rd day of August, 1993

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. ALAN SPEIGHTS LUSTER, Respondent.	Docket SE-13189

OPINION AND ORDER

Respondent has appealed from the oral initial decision issued by Administrative Law Judge Jerrell R. Davis on July 23, 1993, at the conclusion of a two-day evidentiary hearing held in this case.[1] By that initial decision the law judge affirmed the Administrator's emergency order revoking respondent's mechanic, commercial pilot, flight instructor, and advanced ground

[1] Attached is an excerpt from the hearing transcript containing the oral initial decision.

instructor certificates based on his alleged violations of 14 C.F.R. 65.20(a)(1) and (a)(2).[2] For the reasons that follow, we deny the appeal.

The emergency order of revocation, issued on May 26, 1993, alleged, in pertinent part:

> 2. On or about March 4, 1993, you made application for renewal of your purported Inspection Authorization privilege to representatives of the Administrator at the Los Angeles Flight Standards District office.
>
> 3. As part of the process of renewal, you presented your Inspection Authorization Certificate purportedly issued to you purportedly signed by "Boyd C. Peterson," Flight Standards Inspector. The Federal Aviation Administration has at no time ever employed any person by this name.
>
> 4. As of this date, you have never been issued an Inspection Authorization by the Federal Aviation Administration.
>
> 5. You fraudulently or intentionally falsely stated on an application for a certificate or rating under the Federal Aviation Regulations that you held an Inspection Authorization.
>
> 6. You made or caused to be made a fraudulent or intentionally false entry in a logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for a certificate or rating under the Federal Aviation Regulations.

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[2] Section 65.20(a)(1) and (a)(2) provide as follows:

> **§ 65.20 Applications, certificates, logbooks, reports, and records: Falsification, reproduction, or alteration.**
>
> (a) No person may make or cause to be made --
> (1) Any fraudulent or intentionally false statement on any application for a certificate or rating under this part;
> (2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for any certificate or rating under this part;
> * * *

On appeal, respondent does not dispute the law judge's finding that respondent's Inspection Authorization (IA) was "bogus" and that he "was knowledgeable of such invalidity at the time it was issued to him and that he knowingly utilized it on March 4, 1993, to extend its life for another year, knowing at that time it was void ab initio." (Tr. 453.) He argues, however, that § 65.20 cannot fairly be applied to this case since that section only expressly prohibits fraudulent or intentionally false statements related to a "certificate or rating" under Part 65 and, in respondent's view, an IA is neither a certificate nor a rating. Respondent further maintains that an application for an IA is not a "logbook, record, or report" as those terms are used in § 65.20(a)(2). Respondent also argues that some of the false statements on his IA renewal application were not material. Finally, respondent asserts that the sanction in this case is excessive.

Nature of Inspection Authorization. The requirements for obtaining and exercising the privileges and limitations of an IA are set forth in 14 C.F.R. §§ 65.91, 65.92, 65.93, and 65.95.[3] Although an IA has indicia of both a rating and a certificate,[4]

[3] Those regulations appear in Part 65 ("Certification: Airmen Other Than Flight Crewmembers"), Subpart D ("Mechanics") of the Federal Aviation Regulations.

[4] An IA resembles a rating in that it can only be granted to the holder of a currently effective mechanic certificate. On the other hand, its physical appearance is more like that of a certificate since it is reflected on an independent card, rather than as a notation on the underlying certificate. (The card

the regulations do not explicitly refer to the IA as either one. The Administrator first argued at the hearing that an IA could be classified as a "rating," as that term is defined in the Federal Aviation Regulations (Tr. 258-9),[5] but stated in closing argument that it could be considered either a rating or a certificate (Tr. 394-5, 398). The law judge at first indicated that he thought an IA could be considered either a rating or a certificate (Tr. 258), but ultimately concluded that it was more akin to a certificate (Tr. 400-4, 440).

On appeal, the Administrator takes the position that an IA is a type of rating, and cites Administrator v. Rawdon, 31 CAB 1167, 1168 (1960), in which the Civil Aeronautics Board (our predecessor agency) noted that it had "uniformly recognized the inspection authorization as a rating related to a mechanic's certificate." The Administrator further argues that respondent's position would lead to the "absurd conclusion" that IA applicants are "free of any requirement for honesty in their application." (Reply Br. at 2.) We see no reason to depart from CAB precedent recognizing an IA as a rating, and, accordingly we reject respondent's contrary view.[6] Nor do we perceive any unfairness

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itself is titled simply "Inspection Authorization.")

[5] "Rating" is defined in 14 C.F.R. 1.1 as "a statement that, as a part of a certificate, sets forth special conditions, privileges, or limitations."

[6] Nevertheless, while we agree with the Administrator's position on appeal that an IA can be characterized as a rating, we do not necessarily disagree with the law judge's conclusion that it can also be considered a type of certificate. (See Tr. 400-04, 440.) Indeed, we agree with the FAA's investigating

in holding that § 65.20 prohibits fraudulent or intentionally false statements on an application for an IA.

Applicability of § 65.20(a)(2). Respondent argues that the alleged violation of § 65.20(a)(2) should have been dismissed because an IA application is not a "logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for any certificate or rating under this part," as referred to in that regulation. We disagree. An IA application is unquestionably an official record which is required to be made and used in order to show compliance with the requirements for issuance or renewal of the IA. Respondent complains that if the application is considered both an "application" under § 65.20(a)(1) and a "record" under § 65.20(a)(2), an individual could be charged with a violation of both subsections "based on the identical offer of proof." (App. Br. at 7.) However, we see no unfairness in this result. It is patent that one instance of unlawful conduct can violate more than one regulation.

Materiality of respondent's falsification. Respondent argues that the purported recent aircraft maintenance experience he listed in response to questions 10 and 11 on the IA renewal

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inspector in this case that the issue is largely one of semantics. (See Tr. 246.)

application[7] were not material,[8] because the renewal was based on his participation in a refresher course, not on experience.[9] (App. Br. at 6.) However, respondent does not challenge the materiality of the false representation that he already held a valid IA which could be renewed, implicit in his affirmative response to question 9 on the application: "Have you met the minimum requirements for renewal of inspection authorization?" In our judgment, this falsification alone, which clearly is material, warrants revocation of respondent's certificates (see sanction discussion below). Accordingly, we need not decide

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[7] Specifically, respondent indicated in response to question 10 ("basis for renewal") that he had performed one annual inspection, and in response to question 11 ("aircraft maintenance activity during last 2 years") that he had participated in "annual & 100 hour inspection programs." (Exhibit C-9.) The Administrator's evidence indicated that respondent had not in fact performed an annual inspection (Tr. 151), and that it was unlikely he had participated in the annual and 100 hour inspection program listed (see Tr. 135-6, and testimony of Inspector Moon, generally).

[8] Respondent cites Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976), which sets forth the elements of fraudulent and intentionally false statements, including the requirement that the statement be of a material fact. A material fact is one which has a natural tendency to influence, or is capable of influencing, a decision of the agency in making a required determination. Twomey v. NTSB, 821 F.2d 63 (1st Cir. 1987).

[9] The FAA's investigating inspector testified that an IA can be renewed either on the basis of experience or on the basis of having completed a refresher course. (Tr. 167-9.) The inspector who renewed respondent's IA acknowledged that the renewal was based on respondent's completion of a course, not on the experience listed in item 10. (Tr. 53-4, 67.) We note, however, that the experience listed in item 11 ("aircraft maintenance activity during last 2 years") appears to relate to the more fundamental requirement that the applicant for IA renewal still meet the eligibility requirements set forth in section 65.91(c), including being actively engaged for at least the last 2 years in aircraft maintenance. See 14 C.F.R. 65.93.

whether respondent's statements of recent aircraft maintenance experience were material in this case.

Sanction. Respondent asserts that revocation of all of his airman certificates is an excessive sanction in light of his violation-free history, the economic impact revocation will have, the allegedly "vindictive nature" of the proceeding, and Board precedent.

It is well-established that a violation-free record provides no basis for reducing a sanction. See Administrator v. Smith, 5 NTSB 1560, 1566 (1986). Nor can economic impact appropriately be considered a mitigating factor where an airman has been found to lack qualifications. See Administrator v. Daughenbaugh, 4 NTSB 763, 769 (1983); Administrator v. Ferguson, 4 NTSB 488, n. 13 (1982). Respondent's suggestion that this case is motivated by the investigating inspector's alleged vindictiveness against a former FAA inspector accused of (among other alleged improprieties) issuing fraudulent mechanic certificates, is unsubstantiated in the record. In any event, our role is not to evaluate the Administrator's motives in pursuing enforcement action against an airman, but simply to determine whether safety and the public interest require affirmation of the Administrator's order. 49 U.S.C. 1429(a). In this case, we have no doubt that safety and the public interest, as well as Board precedent, require revocation of all of respondent's airman certificates.[10] Respondent's willingness to engage in a

[10] The two cases cited by respondent are inapposite. In

fraudulent scheme to obtain and maintain an undeserved IA (which he perpetuated in his falsified IA renewal application) certainly calls into question his qualification to hold any type of airman certificate.[11]

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;

2. The initial decision is affirmed; and

3. The revocation of respondent's mechanic, commercial pilot, flight instructor, and advanced ground instructor certificates is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

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Administrator v. Stewart, 3 NTSB 1 (1977) (where the respondent purported to exercise the privileges of his IA certificate while that certificate was under suspension) the Board found, unlike, here, that respondent's deficiency pertained only to his judgment and responsibility in using his IA, and did not implicate his proficiency or judgment in using his mechanic certificate. Although in Administrator v. Damsky, 3 NTSB 543 (1977) the Board affirmed revocation of only the respondent's mechanic certificate (leaving intact his commercial pilot certificate), that case provides no meaningful sanction guidance since the Administrator's order in that case sought no more. See Administrator v. Kuri, 4 NTSB 1871, 1873 (1984).

[11] See Twomey v. NTSB, 821 F.2d 63, 68 (1st Cir. 1987) (the Administrator could find an important connection between the morality of a pilot who falsifies and public safety); Administrator v. Morse, NTSB Order No. EA-3766 (1992) (pilot who knowingly falsified an aircraft logbook demonstrated that he lacked the necessary non-technical qualifications to hold a pilot or mechanic certificate); Administrator v. Monaco, NTSB Order No. EA-2835 (1988) (few violations more directly call into question a pilot's non-technical qualifications than do those involving falsifications).